IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.1912/1996

Mehanga Singh & Ors. vs. State of Rajasthan & ors.

Date : 7.9.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.SL Jain, for the petitioners.
Mrs.RR Kanwar, Dy.GA, for the respondents.

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BY THE COURT :

Heard learned counsel for the parties.

The petitioners are aggrieved against the order passed by the Executive Engineer, Irrigation, Suratgarh Division, Sri Vijaynagar dated 7.6.1996 on the ground that the Executive Engineer was under obligation to pass appropriate order under the provisions of Rajasthan Irrigation and Drainage Rules, 1955 (for short 'the Rules of 1955') but in this case, the Executive Engineer has only followed the directions issued by the Irrigation Minister which is apparent from the order dated 7.6.1996.

The petitioners also submitted their objections Annex.1 against the proposal of Executive Engineer for which the Executive Engineer issued notice Annex.2 dated 20.1.1996. Without deciding the petitioners any objections and without obtaining the technical report, the Executive Engineer opened the outlet vide order dated 7.6.1996 at the instance of the Irrigation Minister. In view of the above, according to learned counsel for the petitioners, the decision is not of the Executive Engineer himself.

Learned counsel for the petitioners relied upon the judgment of this Court delivered in the case of Jarnail Singh vs. The Superintending Engineer and another reported in 2001(3) WLC (Raj.) 117 wherein the Division Bench held that the order of allowing or rejecting the application for shifting of outlet can be passed by the District Irrigation Officer and not by the Superintending Engineer.

Learned counsel for the respondent State vehemently submitted that it may be true that there is a mention that the outlet has been opened on the instructions received from the concerned Minister but the respondents have placed on record the material to show that the decision was just, right and correct and technically it was feasible.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

The order dated 7.6.1996 has been passed by the Executive Engineer without considering any of the contention of any of the parties and it straightaway opened the outlet on the instructions of the Irrigation Minister only. In view of the above, only because of this reason alone, the order dated 7.6.1996 cannot be sustained.

In view of the above reasons, this writ petition is allowed, the order dated 7.6.1996 is set aside and the matter is remanded to the concerned Executive Engineer for deciding the matter afresh after giving opportunity of hearing to the petitioners and to the cultivators who may be affected and who are required to be heard under the Rules of 1955. The Executive Engineer is directed to decide the matter within three months from the date of receipt of the copy of this order.

It is further made clear that the position which is existing today shall be maintained till the decision is taken by the Executive engineer in this matter.

(PRAKASH TATIA), J.

S.Phophaliya